

DELTA PROTECTION COMMISSION

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March 14, 1997

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Status of Regulation (Utilities and Infrastructure P-3)

Background:

The Commission adopted its regional plan, Land Use and Resource Management Plan for the Primary Zone of the Delta on February 23, 1995. The Plan included Utilities and Infrastructure Policy P-3 (P-3) which states:

New sewage treatment facilities (including storage ponds) and areas for disposal of sewage effluent and sewage sludge shall not be located within the Delta Primary Zone.

[Note: The Rio Vista project, as described in the adopted Final Environmental Impact Report for such project, and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids are exempt from this policy.]

Subsequently, the Commission was sued by Wheelabrator Clean Water Systems, Inc., Bio Gro Systems Division in Sacramento County Superior Court. The issue in the case was whether P-3 was a "regulation" subject to the provisions of the Administrative Procedure Act (APA). The APA requires that regulations adopted by State Agencies be reviewed and approved by the Office of Administrative Law before they may take affect.

The Sacramento County Superior Court ruled on November 14, 1995, that P-3 constitutes a "regulation" under the APA. The Court's decision applies to P-3 only. The Court declared P-3 to be invalid "for a substantial failure to comply with the APA". The Commission agreed to abide by the Court's ruling and to "set aside" P-3.

Plan Amendment and Adoption of P-3 as a Regulation.

In February of 1996, the Commission started the process of proposing to adopt P-3 as an amendment to the regional plan in the form of a regulation. In accordance with the provisions of the APA, a comment period was noticed, three public hearings were held, and on September 26, 1996, by unanimous vote, the Commission voted to amend the regional plan and adopt P-3 as a regulation.

The rulemaking file was submitted to the Office of Administrative Law on December 12, 1996. The 30 working day review period by OAL ended January 28, 1997.

Action of Office of Administrative Law.

On January 28, 1997, OAL issued a "Notice of Approval of Regulatory Action" (see attached copy), and submitted the approved regulation to the Secretary of State.

The regulation took effect thirty days after the OAL approval and filing with Secretary of State, and is now in effect.

Local Government Conformance with the New Regulation.

The Delta Protection Act (Act) states that within 180 days of any amendments by the Commission, all local governments shall submit to the Commission proposed amendments which will cause their General Plans to be consistent with the amended regional plan. Those submittals will be reviewed by the Commission, and returned to the local governments for General Plan amendments, if necessary.

Yolo County has recently (January, 1997) adopted a sludge disposal ordinance which precludes placement in the Delta Primary Zone.

San Joaquin County is in the process of adopting an ordinance which would preclude placement of sewage sludge anywhere in the County (Negative Declaration has been circulated; public hearing before the Board of Supervisors scheduled for Tuesday, March 25, 1997).

Proposed Action by the Commission.

The Commission should direct staff to send a letter to the eight local governments with lands in the Delta Primary Zone (Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties, and the Cities of Pittsburg, Rio Vista, and Stockton) notifying them of the new regulation and requesting proposed General Plan amendments, if necessary, and advise the Commission of the status of their General Plan.

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In re:
DELTA PROTECTION COMMISSION
REGULATORY ACTION:
Title 14
California Code of Regulations)
Adopt 20030

3